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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,052	04/04/2001	Bryan Raudenbush	UWHEE-1	1069
7590	12/31/2003		EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. ARLINGTON COURTHOUSE PLAZA I SUITE 1400 2200 CLARENDON BOULEVARD ARLINGTON, VA 22201			MATTHEWS, WILLIAM H	
			ART UNIT	PAPER NUMBER
			3738	
			DATE MAILED: 12/31/2003	
			21	

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	09/825,052	RAUDENBUSH, BRYAN
	Examiner William H. Matthews (Howie)	Art Unit 3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 18-35 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10-2-03 have been fully considered but they are not persuasive.
2. With regard to Delmore, Applicant contends the Delmore device functions due to the mechanical aspect of the dilator. Examiner disagrees because Delmore clearly discusses the invention as a medicated nasal dilator in paragraph 1 and states that medicaments are used for health benefits. Furthermore, it is known in the art of aromatherapy that peppermint is a stimulant which would inherently increase athletic performance as Delmore describes.
3. With regard to Weil, Applicant contends the venues of Weil are not considered as normal athletic performance. Examiner disagrees because lines 6-10 on page 2 of Applicant's specification describe athletic performance as any activity which can be measured by increases or decreases in many factors, for example "fatigue".
4. With regard to Bonner, Applicant contends Bonner's disclosure of increasing vitality is vague and ambiguous. Examiner disagrees because Merriam-Webster's Collegiate Dictionary 10th Edition defines "Vitality" as "physical or mental vigor" as well as "power of enduring". Furthermore, "Vigor" is defined as "active bodily or mental strength or force" and intensity of action". Therefore Bonner discloses increasing athletic performance as defined in Applicant's specification page 2 lines 6-10 (strength, intensity, endurance, energy, etc.).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 18-27,29-33,35 are rejected under 35 U.S.C. 102(a) as being anticipated by Delmore et al. (EP 1033118).
2. Regarding claim 18, Delmore et al. discloses a method of inhaling peppermint oil vapors, through medicated nasal dilators, for increasing athletic performance of humans (see column 1, lines 12-26 of column 1 and lines 9-54 of column 7). Regarding the limitations of claims 19-26 and 35, each limitation is an inherent aspect of increasing athletic performance. Furthermore, any athletic performance activity would increase pulse rate or arterial pressure over baseline.
3. Claims 18-27,29,30,32,33,35 are rejected under 35 U.S.C. 102(b) as being anticipated by Weil et al. (DE 3931150).

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4. Weil et al. discloses a method of increasing athletic performance of a human through the use of a peppermint odorant contained within a polymer (the mixture of oils) administered by a 5 cc vessel (see abstract). Note Applicant's specification at page 2 lines 6-10 which describe athletic performance as any activity which measurably increases or decreases fatigue. Regarding the limitations of claims 19-26 and 35, each limitation is an inherent aspect of increasing athletic performance. Furthermore, any athletic performance activity would increase pulse rate or arterial pressure over baseline.

5. Claims 18-30,32,33,35 are rejected under 35 U.S.C. 102(b) as being anticipated by Dr. Bronner's Soaps & Sal Suds www.drbronner.com/soaps.html dated Feb 29, 2000 and retrieved through www.archive.org.

6. Dr. Bronner discloses a Peppermint Pure-Castile soap that provides an olfactory stimulating amount of peppermint to enhance athletic performance (vitality). Merriam-Webster's Collegiate Dictionary 10th Edition defines "Vitality" as "physical or mental vigor" as well as "power of enduring". Furthermore, "Vigor" is defined as "active bodily or mental strength or force" and intensity of action". Regarding the limitations of claims 19-26 and 35, each limitation is an inherent aspect of increasing athletic performance. Furthermore, any athletic performance activity would increase pulse rate or arterial pressure over baseline.

7. Claims 18-27,29,30,32,33,35 are rejected under 35 U.S.C. 102(e) as being anticipated by Essential Oil Benefits www.tri-esssciences.com/Essential%20Oil%20Benefits.htm dated 3/27/01.

8. Essential Oil Benefits discloses the well-known use of Peppermint as a stimulatory vapor medicament for increasing physical strength and endurance (or athletic performance). Regarding the limitations of claims 19-26 and 35, each limitation is an inherent aspect of increasing athletic performance. Furthermore, any athletic performance activity would increase pulse rate or arterial pressure over baseline.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Delmore et al. (EP 1033118) or Weil et al. (DE 003931150) or Essential Oil Benefits www.tri-esssciences.com/Essential%20Oil%20Benefits.htm dated 3/27/01 or Dr. Bronner's Soaps & Sal Suds www.drbronner.com/soaps.html dated Feb 29, 2000 as applied to claim 18 above, and in view of Stephens (The horse scents guide to good health, 2000).

10. Each of Delmore or Weil or Essential Oil Benefits or Dr. Bronner's Soaps & Sal Suds meet the limitations of claim 34 except none disclose the mammal being a horse.

Stephens teaches the application of aromatherapy to both humans and horses in order to alleviate physical and emotional problems.

11. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply the method taught by any of Delmore or Weil or Essential Oil Benefits or Dr. Bronner's Soaps \$ Sal Suds to a horse as taught by Stephens in order to improve physical or emotional problems.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number

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is 703-305-0316. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

WJM
WHM
December 14, 2003

CZ
CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700